ADDRESS OF J. W. GARNER, PROFESSOR OF POLITICAL SCIENCE, UNIVERSITY OF ILLINOIS,

ON

## *Participation of the Alien in the Political Life of the Community.*

At common law no one out of allegiance to the king could exercise any political function, and, indeed, so great was the distrust of the alien born even after his naturalization that for a long time naturalized subjects, like aliens, in England were discriminated against in the bestowal of political privileges. Not until 1870 were they eligible to membership in either house of the British Parliament (33 and 34 Vict., ch. 13), and, as is well known, only native-born citizens were made eligible to the offices of President and Vice-President of the United States. Moreover, no person of foreign birth is eligible to membership in either house of Congress for a period of years after his naturalization. These discriminations against aliens, as well as citizens of foreign birth, in favor of the native, are evidences of the early fear of the possible mischief of foreign influence — fears which have not yet entirely disappeared, though, of course, they are no longer well founded. Even Hamilton, himself of alien birth, was not without apprehension that the republic was destined to suffer from the introduction of foreign influence through the political activity of the alien element. "One of the weak sides of republics among their numerous advantages," he observed, "is that they afford too easy an inlet to foreign corruption."[1] Concerning the propriety of excluding aliens from eligibility to public office, Judge Story said, nearly eighty years ago, that there could scarcely be any room for debate, "for there could be no security for a due administration of any government by persons whose interests and aims were foreign and who owed no allegiance to it and had no permanent stake in its measures or operations." Foreign influence, he went on to say, could not fail to make its way into the public councils if there were no guard against the introduction of alien representatives. He even doubted whether foreigners who had become citizens

[1] Federalist, No. 22.

by naturalization should be eligible as representatives in Congress, and, in any case, a period of years should elapse after naturalization before they should be qualified.[2] Sir Alexander Cockburn, writing in 1869, pointed out that the effect of naturalization in Great Britain did little more than remove the civil disabilities to which aliens were subject. The question of the removal of their political disabilities by naturalization, he said, might be put out of consideration. By the common law of nations, he added, the exercise of political rights — the capacity to take part in legislation or government — was reserved to such as were members of the community, to the exclusion of those who, though residing within its territory, belonged to another state which might have different or perhaps hostile interests to promote.[3] At the time he wrote not only were aliens rigorously excluded from every political privilege in England, but even naturalized citizens were, as already stated, debarred from membership in either house of Parliament. Notwithstanding the stringent common-law rule regarding the political disabilities of aliens, and notwithstanding the more or less widespread fear in this country of foreign influence through alien suffrage, aliens were occasionally allowed to vote in State and Territorial elections, from the very beginning of our national existence. The Ordinance of 1787 for the organization of the Northwest Territory expressly permitted unnaturalized persons to vote and to serve as members of the Territorial House of Representatives, provided they owned a certain amount of property and had resided in the territory for a specified term of years. Speaking of this provision, Senator Stephen A. Douglas said in the Senate, May 24, 1854:

In all the northern territory, in Ohio, Indiana, Illinois, Michigan and Wisconsin,[4] aliens under certain conditions were permitted to

[2] Commentaries on the Constitution, Vol. I (4th ed.), Sec. 618.

[3] Nationality, p. 138.

[4] Senator Douglas was in error as to Wisconsin, for the organic act of 1836 for the government of that territory restricted the right to vote to citizens of the United States. Apparently, however, this restriction did not commend itself to the people of the territory for in the first constitution of the state the right of suffrage was extended to aliens who had declared their intention of becoming citizens of the United States. — J. W. G.

vote, not only when those States were Territories, but when they became States; and this provision was not peculiar to the Northwestern States as has been supposed.

Outside of the Northwest Territory and the Southwest Territory, to which the Ordinance of 1787, minus the anti-slavery provision, was also applicable, Congress, generally, in the organization of new States pursued the same liberal policy, as it was then regarded, of allowing aliens under certain conditions to exercise the right of suffrage. In all the organic acts for the government of the Territories, with the exception of that of 1836 for the government of Wisconsin, that of 1838 for the government of Iowa and that of 1850 for the government of Utah, the privilege of voting in territorial elections was either extended to aliens who had declared their intention of becoming citizens of the United States or the Territorial legislatures were permitted to do so, and many of them availed of the opportunity. Occasionally, attempts were made in Congress to insert in enabling Acts for the admission of new States to the Union provisions excluding aliens from the suffrage, but such attempts usually failed. Such a restriction was proposed by Mr. Clay to the Act for the admission of Michigan, but it was rejected in the Senate by a vote of 14 to 22. A similar amendment to the Kansas-Nebraska bill in 1854 was negatived by a vote of 7 to 41. A strong effort was made to admit Minnesota in 1857 with an anti-alien suffrage constitution, but it too failed.

Senator Douglas, in opposing the proposed restriction, called attention to the fact that aliens had enjoyed a limited right of suffrage in Minnesota throughout the Territorial period, that nothing in the experience of the Territory so far as alien suffrage was concerned had justified the proposed abandonment of the liberal policy hitherto pursued by Congress, and that no pretense of evil results from alien suffrage had ever been made by any one.

This somewhat liberal policy in the course of time, however, found organized opposition in the demand of the American or "Know Nothing" party that all constitutional provisions or legislative acts allowing unnaturalized foreigners to vote, be repealed, and that all offices of honor, trust or profit be open only to native-born Protestant

citizens. This illiberal opposition to the alien element of our population was not, however, general and after a brief period it gradually subsided. With the enormous influx of worthy immigrants since the Civil War — an influx which has added immensely to the wealth and resources of the country — there has been more and more of a disposition not only to treat aliens on a footing of absolute equality with citizens in respect to civil rights, but also to accord them wider political privileges. At the present time the following States and Territories allow aliens who have made a declaration of intention to become American citizens the right to vote in all elections equally with citizens, and presumably also to hold office whenever they possess the other qualifications required: Alabama, Arkansas, Arizona (organic act), Colorado, Florida, Indiana, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Oregon, South Dakota, Texas, Wisconsin and Wyoming — nineteen in all.[5] These States had, according to the census of 1900, an aggregate alien population twenty-one years of age or over amounting to 176,145,[6] and the number is now, no doubt, much larger. Since under the naturalization laws the declaration of intention may be made immediately upon arrival in the United States, all of these persons, provided they possess the other qualifications required, might vote in their respective States. The total number of aliens in these States who had declared their intention of becoming citizens of the United States, and were therefore qualified voters, amounted to 234,453. In some cases the number of alien voters constituted a very considerable part of the voting population. In Minnesota the number of such voters was 35,694; in Wisconsin, 77,270; in Texas, 15,588; in North Dakota, 10,550; in Michigan, 31,154; and in Nebraska, 14,372. It is manifest from this showing that in some of the States alien suffrage exists in a much larger degree than is popularly supposed, and, so far as we are able to learn, the mischiefs early imagined have not been realized.

In thus bestowing upon unnaturalized foreigners the right to vote,

[5] In Vermont, whose Constitution allows "every man of full age" to vote, aliens might also claim the privilege.

[6] Census Report, 1900: Population, Vol. I, p. 913.

and, as a consequence the right to hold office, the States mentioned have exhibited a spirit of liberality toward the alien class not practiced in any other country. The British Naturalization Act of 1870, in conferring upon aliens the right to acquire, hold and dispose of real and personal property of every description, expressly declares that "this provision shall not be construed as qualifying any alien for any office or for any municipal, parliamentary or other franchise." As Parliament is the sole authority for determining the franchise in all elections, the power to confer political privileges upon aliens can not be exercised by the local authorities. In France aliens are not only excluded from every electoral franchise and from office-holding, but they can not be appointed to any administrative post, to membership upon any commission, or serve on a jury, or exercise the function of advocate, clerk, notary, stock exchange broker, or act as a witness to a notarial or testamentary act, or exercise a public ecclesiastical function, or serve in the regular army or as captains or masters of vessels in the merchant marine.[7] While France goes further than most European states in its discrimination against aliens, they all draw the line strictly between political privileges and civil rights and rigorously exclude foreigners from the enjoyment of the former. The states of Latin-America likewise, though in some cases with less rigor, deny to aliens the enjoyment of political privileges.[8] Thus the Mexican law concerning alienage and naturalization of May 28, 1886 (Art. 36), declares that

aliens do not enjoy the political rights of Mexican citizens; hence, they can not vote for, nor be elected to, any office filled by election of the people, nor can they be appointed to any other office or position in the government service; nor can they belong to the army, navy, or national guard; nor can they assemble to discuss the political affairs of the country, nor exercise the right of petition regarding such matters.

[7] Weiss, Droit International Privé, Vol. II, pp. 169–178; also Andreani, La Condition des Etrangers en France, p. 11; and Calvo, Le Droit International, Vol. II, pp. 193–194.

[8] See summary of the citizenship laws of the various countries in the Report on Citizenship, Expatriation and Protection Abroad (1906), House Document No. 326, 59th Congress, 2d Sess., pp. 270–534.

To this seemingly harsh rule there are some exceptions, for the law allows the appointment of foreigners to certain public positions.

The municipal laws of most countries recognize an incompatibility between citizenship of one state and the holding of public office in another, through the provision almost universal that the acceptance of office under a foreign government operates to expatriate the citizen so accepting it. Thus the constitution of Brazil (Art. 71, Secs. 2 and 29) declares that the rights of Brazilian citizenship are lost to those who accept any employment, pension, decoration or title of nobility from a foreign government, without the permission of the President; and the constitutions or laws of Chili (Art. 9), Costa Rica (Art. 4), Cuba (Art. 7), the Dominican Republic (Art. 17), Guatemala (Alien Law, Art. 7), Haiti (Const., Art. 10), Honduras (Const., Art. 22), Italy (Civil Code, Art. 11), Mexico (Const., Art. 37), Netherlands (Law of 1892 regarding citizenship, Art. 7), Nicaragua, except in the case of Nicaraguans appointed to offices in other Spanish-American states (Const., Title II), Norway (Const., Art. 53), Panama (Const., Art. 7), Paraguay (Const., Art. 40), Peru (Const., Art. 41), Portugal (Const., Art. 22), Roumania (Civil Code, Art. 17), Salvador (Const., Art. 53), Uruguay (Const., Ch. IV), all contain somewhat similar provisions. The French law of nationality promulgated June 26, 1889, provides for the forfeiture of citizenship in the case of a Frenchman who accepts public office under a foreign government and continues to hold it after having been enjoined by the French Government to resign it (Art. 17). A somewhat similar provision is found in the German Imperial Law of June 1, 1870, concerning the acquisition and loss of citizenship (Sec. 22).

The British Naturalization Act does not expressly declare that the acceptance of a public position under a foreign government shall operate to divest the appointee of his character of a citizen, though the common law recognized the two relationships as incompatible, and in such a case there would probably be a forfeiture of the original citizenship. Sir Dennis Fitzpatrick, in a note accompanying the report of a committee appointed in 1901 by the Secretary of State for the Home Department to consider the doubts and difficulties

which have arisen in connection with the interpretation and administration of the naturalization laws, called attention to this omission and suggested that the law should be amended so as to provide that a British subject who should accept service under a foreign government without the previous consent of his government should cease to be a British subject. But as yet the suggestion has not been adopted by Parliament.

The laws of the United States, like those of England, do not expressly provide for the forfeiture of American citizenship by acceptance of office or employment under a foreign government, but the Act of March 2, 1907, relating to the expatriation of citizens and their protection abroad (Section 2) provides that any American citizen shall be deemed to have expatriated himself, when he has taken an oath of allegiance to any foreign state. The acceptance of service, therefore, under a foreign government, so long as it does not involve the taking of an oath of allegiance thereto, has no effect upon the citizenship of the American who accepts the appointment. American citizens are not infrequently called into the service of Oriental governments and sometimes those of Latin-America to assist in the reorganization of their educational or financial systems or to serve as legal advisers, and, as is well known, one of the delegates of China to the Second Hague Conference was a former Secretary of State of the United States. On various other occasions American citizens have been elected or appointed to offices in Latin-American countries, and in several instances the question of the status of such persons has been presented to the Department of State. In 1882 the department laid down the rule that

When a naturalized citizen resumes his residence with his family in the land of his origin and goes into business there, and becomes an office holder and takes active part in political discussions, if it turns out that his action gives offense to the local government and he is thrown into prison, the laws and interests of the United States do not require us to do more than insist that he shall have a right to return to the country of his adoption, leaving the question of damages for future discussion.[9]

[9] Foreign Relations of the United States, 1882, pp. 230–231. In 1895 the department said: "The acceptance of civil office in a foreign country indicates such an identification of the person accepting it with the country he serves as

In 1890 Dr. Alberto Lacayo, a naturalized American citizen, was elected mayor of Granada in Nicaragua. In 1893, while still residing in Granada, where he was engaged in business as a druggist, he applied to the United States Government for a passport "as a measure of protection." The Department of State replied that in accepting the office in Nicaragua it was probable that he had been required to subscribe to an oath to support and defend the Constitution of Nicaragua and uphold its laws (although this fact did not appear in the correspondence) — an act which seemed "certainly to imply citizenship, if indeed it was not tantamount to a renunciation of his acquired allegiance." The passport was refused. It appears that Dr. Lacayo was originally a citizen of Nicaragua, that he had been in the United States only for brief periods since his naturalization, that he was then living with his parents and that he gave no intimation of when, if ever, he expected to return to the land of his adoption.[10]

Sometimes, however, when the nature of the office and the character of the service rendered are such as to be of peculiar benefit to American citizens in the country where the office is accepted, the Department of State has shown a disposition to relax somewhat from the stringency of the above mentioned rule. Thus, in 1894, an inquiry was made of the department by an American citizen as to whether the acceptance by him of a place on the municipal council of Bluefields, Nicaragua, would operate to expatriate him and forfeit his right to the protection of the Government of the United States. He called attention to the fact that the municipal council to which he had been elected was intrusted with the levying of taxes; that by the exercise of economy the same might be lightened, trade revived, confidence restored, and the condition of American interests in Bluefields improved; and that if good citizens would not accept such positions, irresponsible persons having no property to be affected would be chosen with resulting injurious consequences to American

to raise serious doubts whether he can rightfully claim as against that country the protection of his original nationality." Foreign Relations, 1895, Vol. II, pp. 854–855.

[10] Foreign Relations of the United States, 1893, p. 183.

business and property. The Acting Secretary of State said in reply:[11]

In view of the fact that you are domiciled in Nicaragua not for the purpose of a permanent residence, but with the intention of returning to the United States, and in view also of the importance of American investments in Bluefields, which so largely predominate there, and that American citizens thus interested naturally have a deep concern in the matter of local taxation and good municipal administration, I am of the opinion that to accept the position for which you have been selected, and to act as one of the municipal council aforesaid, recognized by the Government of Nicaragua, will not operate to forfeit the protection to which American citizens in a foreign jurisdiction are entitled, but that such protection would be extended, subject, however, to the limitations and conditions applicable to those so situated; that whatever is done must be in the light of the Nicaraguan constitution and Nicarauguan laws, and with a view also of the possible results consequent upon any internal dissensions that may occur, or changes of Nicaraguan authority against which this Government can not provide.

In a more recent case, where an American citizen had been elected to a municipal office in Cuba during the American occupation of the island, the department laid down the rule, now apparently embodied in the Act of March 2, 1907, referred to above, that acceptance of office under a foreign government without the taking of an oath of allegiance would not of itself operate to expatriate the citizen so accepting it. In this case the department said:

If in accepting the office, you do not take an oath of allegiance to a foreign state, nor renounce allegiance to the United States, the mere acceptance of the municipal office under the present régime in Cuba would not forfeit your American citizenship. But should you remain permanently in Cuba, and at some future time claim the protection of the United States, your acceptance of the office would be a circumstance which might have some bearing on the question whether you had abandoned the right to claim American protection.[12]

In thus permitting, under certain conditions, its citizens to participate in the political life of foreign countries without forfeiting

[11] Moore, Digest of International Law, Vol. III, pp. 783–784.
[12] Moore, Digest of International Law, Vol. III, p. 785.

their national character, and without losing their right to protection, so long as they do not take an oath of allegiance to a foreign government, the United States follows a liberal policy not observed by any European or Latin-American state. In other respects our treatment of aliens has been unparalleled in its liberality. Neither the Constitution nor the statutes of the United States expressly require citizenship for any executive office except for the President and Vice-President, and hence alienage is not a legal bar to appointments in the executive service, and as a matter of fact they not infrequently do receive appointments to technical positions. By an executive order of June 13, 1906, the United States Civil Service Commission was authorized, whenever there was an insufficient number of eligibles who were American citizens to fill vacancies occurring in any branch of the civil service, to admit aliens to the examination and to certify them to the appointing authority.[13] Aliens are, of course, eligible to enlistment in the army and navy; they may fill positions below the rank of "watch" in the merchant marine; they may be admitted to practice at the bar; the State and Federal courts are open to them equally with citizens; they may be witnesses to notarial and testamentary acts; they may "enter" the public lands under the Homestead Act; as long as the Preëmption Act was in force they were allowed to participate in the benefits of that Act; they may locate mineral and agricultural claims under the Federal land laws; and by a recent Act aliens who have declared their intention of becoming citizens of the United States and have resided here for a period of three years may procure a passport entitling them to the protection of the government in any foreign country.[14] In most States they are allowed to be employed equally with citizens on public works, though in a few States they are discriminated against by laws which prohibit public contractors from employing them; and they are entitled under the Fourteenth Amendment to the equal protection of the laws the same as citizens.

[13] Twenty-fourth Report of the U. S. Civil Service Commission, pp. 65–66.

[14] Act of March 2, 1907. See also the rules governing the issue of passports, dated March 23, 1907, American Journal of International Law, April, 1907, Supplement, pp. 259–261.

On the other hand, they may be required to do militia and patrol duty or serve in the *posse comitatus* whenever the local defense requires, and under the precedent set during the Civil War they may, if they have declared their intention of becoming citizens of the United States, be drafted into the national military service.[15]

From what has been said above it is clear that the tendency in this country has been more and more in the direction of enlarging the public rights and obligations of aliens and of assimilating them to the citizen class in respect to the public law as well as the private law. The time seems to have come when it is worth considering whether considerations of justice and enlightened policy, to say nothing of expediency, do not require a still further enlargement of the political rights of aliens, at least of those who have declared their intention of becoming citizens, who have acquired property and who give evidence of good character and of attachment to the principles of the Constitution. Many thoughtful men are now of the opinion that the five-year residence period required as a condition to naturalization might be reduced without evil consequences. This period was fixed more than a century ago when circumstances were wholly different from what they are to-day. The rigorous European policy of exclusion in respect to political privileges is inapplicable because the alien class in all the European countries is comparatively small and includes but a relatively small number of foreigners who have acquired homes and settled there permanently. The disappearance of the Old World policy of exclusiveness in commercial matters, the almost universal recognition of the right of expatriation, the abundance of land in America, the extraordinary industrial opportunities which our country affords, and the increase of the facilities for transportation and the cheapness thereof, have brought throngs of worthy immigrants to our shores.[16] Many of them have transferred their interests to America, acquired homes here and are contributing in various ways to the wealth and power of the country. According to the census of 1900 there were, as stated above, more

[15] See Moore, Digest of International Law, Vol. IV, p. 57.

[16] Compare the address of Senator Elihu Root on "The Basis of Protection to Citizens Residing Abroad," in the Proceedings of this Society for 1910.

than 1,000,000 male aliens twenty-one years of age and over in the United States, not including 416,863 aliens who had declared their intention of becoming citizens.[17] Since then the number of immigrants has averaged in the neighborhood of a million a year, so that it is probably fair to assume that the number of aliens of voting age now in this country is not far from 2,000,000. In New York State in 1900 the aliens of voting age constituted nearly ten per cent. of the adult male population; in Massachusetts nearly one-sixth of the total; and in Pennsylvania more than one-eighth. Yet in these and other States they are entirely excluded from every political privilege, even though they may have declared their intention of becoming citizens. The presence of so large a body of disfranchised persons in our midst is not without its disadvantages. A restricted and properly safeguarded right of suffrage for the more intelligent and worthy of this class would not endanger the body politic, but would be in line with the historic liberal and enlightened policy of this country in other respects toward the alien class, would tend to attach them to our institutions and stimulate their interest in its welfare.

ADDRESS OF MR. ALPHEUS HENRY SNOW, OF WASHINGTON, D. C.

ON

## *The Participation of the Alien in the Political Life of the Community.*

In discussing this subject, it is necessary, first of all, to distinguish between the political rights of the individual — whether he be a citizen or an alien — and his civil rights. By political rights we mean his rights to exercise the power of voting and of governing. By civil rights we mean his social and economic rights — his rights of life, liberty and property. It is settled by the consensus of the civilized world that political rights are not universal, like the rights of life, liberty and property, but that they are special rights, or privileges, to which some persons in every community are justly entitled and others are not. The rights of life, liberty and property cor-

[17] Census Report: Population, Vol. I, p. 913.

respond to the three attributes of life, motion and prehension, with which every human being is endowed by his Creator, and the exercise of which, under proper conditions and limitations, is essential to the existence of every human being. Accordingly they are universal, and civilized nations recognize a rule of supreme law securing these civil rights. On the other hand, the right to vote and to govern corresponds to the attribute of judgment, which is not common to all, and is possessed only by sane civilized adults, who have been educated in judgment. Each nation, within reasonable limits, determines for itself who have the requisite judgment to be able, with advantage to the community, to exercise the power of voting and governing. The decision of the Supreme Court of the United States, in 1874, in the case of *Minor* v. *Happersett* (21 Wallace, 162), in which it was held that participation in the political life of a State of the Union was not a right of life, liberty or property, nor a necessary incident to citizenship of the United States, was but an application of the established customary law of the society of nations.

Considering now the various ways in which the resident alien may participate in the political life of the community, we take up first, his participation in its abnormal political life. Naturally, participation in proceedings designed to produce anarchy comes first. Here it makes no difference whether the alien is a resident or a mere visitor in the country. The offence of preaching anarchy or acting in accordance with anarchistic principles, is an offence against all nations individually and against the society of nations. The interposition of the nation of which such a resident alien is a citizen, would be confined to seeing that the offence was fairly proved and that cruel or unusual punishment was not applied. Anarchists are international outlaws and are to be treated as such.

Participation by resident aliens in open revolutionary movements raises an entirely different set of questions. A revolutionary movement may be morally right and necessary as the only means of preventing oppression by a government which is persistently acting contrary to the ends of its institution and violating the rights of the individual to his life, liberty or property. The movement is not for the overthrow of all government, but for the deposition of certain

persons claiming to be a particular government. If a revolutionary movement succeeds, the revolutionists form the government of the nation. Participation by resident aliens in revolutionary movements may, however, bring upon them the vengeance of the government, or be a cause for complaint, by the government, against the nation of which the aliens are residents, or may be invoked as a justification for revoking concessions made to resident aliens; and if the resident aliens appeal to their nation, the nation has to determine its course according to the needs of the situation as viewed from its own standpoint and from the standpoint of the society of nations. Considering the danger to the peace of the world from revolutionary movements and the desirability of having political evils corrected by orderly and systematic methods, nations are very slow to give their protection to their citizens who engage in revolutionary movements in foreign countries. They will, indeed, take into consideration the fact whether or not the alien acted under compulsion in participating in the revolutionary movement, and whether or not his participation was rather for the purpose of protecting life or property than for the purpose of rendering the revolutionary movement successful. In other words, they will consider his intent, as well as his acts.

The general rule seems to be that if a resident alien participates in the revolutionary movements, he does so at his own risk, and if the nation of his citizenship interferes to protect him, it will be because, looking at the question both from the national standpoint and the standpoint of the society of nations, it is willing to countenance or excuse the revolutionary movement as the only reasonable means of combating intolerable oppression. The protection of the alien would in such case be an incident of national policy. The principle was thus expressed in a letter from the Secretary of State of this country to our minister to Corea, in 1897.[1]

It behooves loyal citizens of the United States in any foreign country whatsoever, to observe the same scrupulous abstention from participating in the domestic concerns thereof, which is inter-

[1] Moore's Digest, Vol. IV, p. 15.

nationally incumbent upon his Government. They should strictly refrain from any expression of opinion or from giving advice concerning the internal management of the country, or from any intermeddling in its political questions. If they do so, it is at their own risk and peril. Neither the representative of this Government in the country of their sojourn, nor the Government of the United States itself, can approve of any such action on their part, and should they disregard this advice, it may perhaps not be found practicable to adequately protect them from their own consequences.

Participation by an alien in revolutionary action, therefore, is not a complete bar to his own nation extending him its protection; but if it does extend him its protection, it will be because of its views of national and international policy and of abstract right and wrong as bearing on the revolution in question.

The next question which arises is as to the effect which voluntary participation by the alien in the normal political life of the community, with its consent, has upon the right and duty of his own nation to protect him. Such an action on his part is analogous to becoming a citizen of the nation of his residence, and if carried sufficiently far, the nation of which he is a citizen may, it would seem, properly refuse him protection on the ground that his actions amount to a renunciation of his citizenship. It seems that the exercise of the franchise by the alien, or even his holding office in the nation of his residence, or participating in the military service of that nation, does not of itself operate to prevent his nation from extending to him its protection; but that, as bearing upon the question whether the alien has expatriated himself and forfeited his right to protection, such action on his part will be considered as important evidence tending to prove expatriation.[2]

The right of expulsion as respects civilized aliens is now rarely exercised by civilized nations except as against aliens who have participated in the abnormal political life of the community; but it may be exercised on this ground without giving cause for international complaint. The Alien and Sedition Acts adopted by

[2] Moore's Digest, Vol. III, pp. 730–735, 783, 785.

the Congress of the United States in 1798 were entirely consistent with international law, being directed against alien political agitators who were trying to engage this nation in a foreign war and probably also in a civil war.

Another class of questions which has arisen is, as to the extent of the protection which a nation gives its citizens who are residents in a foreign nation which has a military conscription system, against the claim of that nation to compel them to participate in its political life as soldiers or to pay a military exemption tax. The law on this subject is so uncertain, that the question is usually settled between particular nations by treaty. One point seems, however, to be settled, namely, that in case of emergency and necessity — as, for instance, where there is danger of invasion, or of attack by savages — the military or constabulary service of aliens, whether residents or sojourners, may be compelled. The strong tendency seems to be for nations to regard as an unfriendly act compulsion to perform military service exercised against their citizens by other nations in which they reside, but to permit without remonstrance the taxation of such persons for military purposes, if the taxation is uniform with that imposed on other persons for the same purpose.[3]

A question arises as to the rights of resident aliens to participate in the political life of the community when a country inhabited by civilized persons is ceded by one nation to another. This matter is generally regulated by the treaty of cession. If the country ceded is contiguous to the nation to which it is ceded, so that it can properly be incorporated with its inhabitants into the body-politic of the nation, it is customary to provide for such incorporation and for citizenship of the inhabitants on equal terms with the other citizens of the nation. If the country is non-contiguous, so that it is impossible to incorporate it in the body-politic of the grantee nation, treaty arrangements can, of course, go no farther than to recognize the ceded country as having a sufficient degree of statehood so that it may have its own citizenship, and to provide that the civilized inhabitants at the time of cession shall be citizens of the ceded

[3] Moore's Digest, Vol. IV, p. 65.

country. Those general principles have been recognized in the treaties of cession made to this nation.

A question of the protection which a nation gives to its citizens residing abroad, in their political rights, led to the Boer War. The Transvaal Republic — or, as it was called, the South African Republic — controlled by persons of Dutch descent, asserted the right to impose such terms upon resident aliens with regard to acquiring citizenship as it might see fit, and in fact imposed such terms that the acquisition of citizenship was made exceedingly difficult, at the same time taxing the resident aliens and placing discriminating burdens on them. The resident aliens were equal or superior in civilization to the native citizens. They were a mixed body of persons who had been attracted by the diamond-field near Johannesburg which began to be exploited in the year 1886. The alien population, called Uitlanders by the Dutch, collected in towns and cities on the diamond-field — the Rand, the Dutch population being scattered throughout the country. The foreign residents increased until they nearly equalled the Dutch citizens. The South African Republic was under the suzerainty of Great Britain, and by the convention determining the specifications of the suzerainty, all foreigners "conforming to the laws" of the state were entitled to enter and reside there and were protected in their civil rights and against discriminating taxation. Nothing was said in the convention respecting their participation in the political life of the state, and as regards their political rights they were subject to the rules of international law. The question was treated as one of international law; the suzerainty being regarded as limiting the right of other nations to intervene but not otherwise affecting the case. Great Britain, in behalf of all Uitlanders, insisted that it was the duty of the South African Republic to provide a method of naturalization of foreigners on reasonable terms — the reasonableness of the terms to be determined by the custom of civilized nations as to admitting resident aliens to citizenship. The South African Republic insisted on terms making the acquisition of citizenship much more difficult than is customary. Lord Milner, as High Commissioner, in his famous dispatch to the Secretary of State for the Colonies, of May 4, 1899, based the case

of Great Britain upon its right of international intervention to protect its citizens, partly on the ground that the action of the South African Republic affected the honor and vital interests of Great Britain, and partly on the ground that it was for the interests of civilization that the right claimed by the South African Republic, to keep civilized resident aliens in a status of political inferiority as long as it might see fit, when they desired to become citizens, should not be yielded to by the civilized nations. In that dispatch he said:

[The Uitlanders] have many grievances, but they believe all these could be gradually removed, if they had a fair share of the political power. This is the meaning of their vehement demand for enfranchisement. Moreover, they are mostly British subjects, accustomed to a free system and equal rights; they feel deeply the personal indignity involved in a position of permanent subjection to a ruling caste, which owes its wealth and power to their exertion. The political turmoil in the Transvaal Republic will never end till the permanent Uitlander population is admitted to a share in the Government, and while that turmoil lasts, there will be no tranquility or adequate progress in Her Majesty's South African dominions. * * *

It is this which makes the internal condition of the Transvaal Republic a matter of vital interest to Her Majesty's Government. No merely local question affects so deeply the welfare and peace of her own South African possessions. And the right of Great Britain to intervene to secure fair treatment of the Uitlanders is fully equal to her supreme interest in securing it. The majority of them are her subjects, whom she is bound to protect. But the enormous number of British subjects, the endless series of their grievances, and the nature of these grievances, which are not less serious because they are not individually sensational, makes protection by the ordinary diplomatic means impossible. * * *

The true remedy is to strike at the root of all these injuries — the political impotence of the injured. What diplomatic protest will never accomplish, a fair measure of Uitlander representation would gradually, but surely, bring about. It seems a paradox, but it is true, that the only effective way of protecting our subjects is to help them to cease to be our subjects. * * *

It could be made perfectly clear that our action was not directed against the existence of the Republic. We should only be demanding the establishment of rights which now exist in the Orange Free State, and which existed in the Transvaal itself at the time of, and long after, the withdrawal of British sovereignty. It would be no

selfish demand, as other Uitlanders besides those of British birth would benefit by it. It is asking nothing from others which we do not give ourselves. And it would certainly go to the root of the political unrest in South Africa, and though temporarily it might aggravate, it would ultimately extinguish the race feud, which is the great bane of the country.

Lord Milner's position was adopted by the British Government.

Professor Westlake, in his lecture on "The Transvaal War," delivered in the University of Cambridge on November 9, 1899, more fully interpreted the government's position and justified the intervention of Great Britain in the internal affairs of the South African Republic to secure for the resident aliens a participation in its political life, as one of those extraordinary rights which grow out of an intolerable situation — the kind of rights referred to in our arbitration treaties as rights to protect the national honor and vital interests. He said:

[This] is a war between two ideals, of which only one is a racial ideal. On one side we have the English ideal of a fair field for every race and every language, accompanied by a humane treatment of the native races. * * * The other ideal * * * is founded * * * on the desire to maintain the Dutch language, the Dutch social and political system, and its mode of treatment of the natives. We must not at once condemn an ideal because it is a racial one. The larger part of the world is governed by racial ideals. * * * We are in a minority in having an ideal which is not a racial one, and we must look with respect, if not with approval, upon ideals which present themselves to the larger part of civilized mankind. * * *

Ideals are always propagandist, and there is another circumstance about them, that they admit of no compromise. There may be a compromise between different measures proposed to be carried out, but between two ideals there is none. The franchise and representation asked for by the Uitlanders by Sir Alfred Milner could not be otherwise than a death blow to the Boer ideal. Now we may think, and I have no doubt that most of us do think, that the English ideal is the better of the two, but that will not give us a right to enter upon a crusade for its propagation. If we allow propagandism to be a cause for war the result will be anarchy throughout the world. And who are we that we should take upon ourselves to say that our own ideals

are not only the best, but so much the best as to make it worth while to propagate them in spite of the horrors caused by the sword? I must say that sometimes I have a feeling, which perhaps not many of you share, when I see the extent to which the English language and institutions are spreading over the world, that even if that spreading is brought about solely by pacific and fair means, there is a possibility that that danger may be incurred which the poet has expressed when he wrote "Lest one good custom should corrupt the world." I am therefore by no means inclined to hurry the extension even of our own ideal. We must then all of us ask what is the justification for that demand which Sir Alfred Milner made at the Bloemfontein Conference and which has since been maintained, that the English ideal should be adopted in the Transvaal Republic or war should follow, as it has followed. * * *

I think that the demand on our part was not founded on any legal right, but that it may have been justified, probably was justified, by one of those situations that occur in the mutual relations of nations, soluble by no canons of legal right, but for which a higher justice must be appealed to — that larger justice which in this country is exercised not by courts applying the law as it is, but by Parliament altering the law — and which is sometimes necessary between nations, bringing into operation demands not founded upon a legal position but upon the intolerable character which a certain situation has assumed.

Without entering into a discussion of the much-mooted question whether there were not other and less worthy issues involved in the Boer War, it seems fair to say, as Lord Milner did, that in a case where a nation denies all participation in its political life to citizens of civilized nations of whose training and capacity for voting and governing there can be no doubt, that nation by its act injuriously affects these nations and the society of nations; for such action, if persisted in and if followed by other nations, would destroy the society of nations and civilized society in general.

Had the persons desiring such participation been citizens of uncivilized states, or citizens of civilized states not having the requisite training or capacity, the case would have been entirely different. In such case there would have been no question of the honor and vital interests of the society of nations being injuriously affected, since it is for the advantage of the society of nations and of civilization in general that the civilized nations should deal cautiously with the un-

civilized nations, and should not permit untrained or incapable persons to participate in their political life as voters or governors.

The question of the participation of resident aliens in the political life of the community is thus seen to involve the most fundamental principles in international life. To deny them all such participation is to destroy the society of nations by fostering national and racial unsociability; to allow unlimited participation is also to destroy the society of nations by allowing lower standards of civilization to pull down higher standards and thus to produce social chaos. Those capable of exercising the franchise and the governmental power should, in the interests of the society of nations, have participation in the governments of their choice; those incapable should be gradually rendered more capable until their limit of capacity is reached, and participation in political life should follow promptly upon attainment of the capacity for such participation. On the other hand, racial and national ideas are to be respected and even fostered, so far as they are not inconsistent with the preservation of the society of nations. No more delicate or important task rests upon a government than that of deciding upon the nature and degree of the protection which it shall give to its citizens resident in other nations who participate in the normal or abnormal political life of the community, or who are compelled against their will to so participate, or who, being qualified by capacity and training to vote and govern, desire to become citizens of the nation of their residence and are denied this privilege.

The CHAIRMAN. The next heading is the "Rights and Remedies of Aliens in National Courts," and we will be addressed by Mr. Frederic R. Coudert of New York.

ADDRESS OF MR. FREDERIC R. COUDERT, OF NEW YORK CITY.

ON

*The Rights and Remedies of Aliens in National Courts.*

The subject is naturally one of rather narrow limitations. The general position of the alien, as the previous speakers have shown, is that of gradual emancipation from the disabilities imposed upon him